

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification for) Docket No.
The Solar Two Power Project by) 08-AFC-5
Stirling Energy Systems)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM B
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, NOVEMBER 10, 2009

2:05 p.m.

Reported by:
John Cota
Contract No. 170-08-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Jeffrey Byron, Presiding Member

Julia Levin, Associate Member

HEARING OFFICER AND ADVISORS

Raoul Renaud, Hearing Officer

Kristy Chew, Advisor

Jim Bartridge, Advisor

STAFF AND CONSULTANTS PRESENT

Christopher Meyer, Project Manager

Caryn Holmes, Staff Counsel

APPLICANT

Allan J. Thompson, Attorney
on behalf of Tessera Solar

Sean Gallagher, Vice President
Tessera Solar
Stirling Energy Systems, Inc.

Bob Therkelsen
Energy and Environmental Consulting
Tessera Solar

Marc C. Van Patten, Senior Director of Development
Tessera Solar

INTERVENORS

Loulana A. Miles, Attorney
Adams, Broadwell, Joseph and Cardozo
California Unions for Reliable Energy

ALSO PRESENT

Steven J. Borchard, District Manager
Bureau of Land Management

Edie Harmon

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1 P R O C E E D I N G S

2 2:05 p.m.

3 PRESIDING MEMBER BYRON: Good afternoon,
4 everyone. I'm sorry we're a little bit late.
5 This is Jeff Byron. I'm the Presiding Member on
6 the Solar Energy Systems One (sic), also known as
7 Calico, is that right? This is Two, this is
8 Imperial Valley Solar. Forgive me. I'm the
9 Presiding Member.

10 Along with me is the Associate Member,
11 Commissioner Julia Levin. And our Hearing
12 Officer, Mr. Renaud. And our Advisors are with
13 us, as well. Mine, Kristy Chew, and Jim Bartridge
14 for Commissioner Levin.

15 Let's go through the intros real quick
16 and see -- we're not going to get it back on
17 schedule, but I do have a meeting that I want to
18 try and get to. So, let's proceed post haste, Mr.
19 Renaud.

20 HEARING OFFICER RENAUD: Thank you,
21 Commissioner Byron. So we have the Solar Two
22 status conference. We have, I think, pretty much
23 the same parties except in the intervenor area
24 where we have CURE as the only intervenor.

25 And would you care to do a quick

1 introduction on behalf of --

2 MR. VAN PATTEN: This is Marc Van Patten
3 with Tessera Solar. I'm the only one new on this
4 -- on the applicant's side.

5 HEARING OFFICER RENAUD: All right.
6 Very good. Counsel is Allan Thompson. And Chris
7 Meyer is the Project Manager, and Caryn Holmes is
8 the Staff Counsel.

9 And I see that the representative for
10 CURE is just re-entering the room. We have
11 started Solar Two. All right.

12 The purpose here really is to discuss
13 the new schedule. The schedule comparison
14 prepared by Mr. Therkelsen is extremely useful and
15 I thank you for doing that.

16 And perhaps we'll start with you if
17 you'd like to just show us the salient points
18 here.

19 MR. THERKELSEN: I won't talk about the
20 same things on this schedule that I did on Solar
21 One, to reduce time. Because basically many of
22 the same proposals in terms of prehearing
23 conferences and accelerating the biological
24 opinion are the same.

25 Again, you'll notice there's a month

1 difference. And I think the same thing is true on
2 this schedule as on the previous one, where we
3 propose accelerating both the staff assessment,
4 DEIS and the supplemental staff assessment, FEIS,
5 two weeks, in each case, earlier than what the
6 staff is proposing.

7 There are additional items, though, on
8 this schedule that are not shown on Solar One
9 because there's activity on the part of the U.S.
10 Army Corps of Engineers. And so we have also
11 identified -- we've had meetings with the Corps
12 and have identified what we anticipate will be
13 schedule items for them, in terms of documents
14 that they need or decisions that they will
15 release.

16 And based on our discussions with the
17 Corps they do believe it's possible for them to
18 release their record of decision at the same time
19 the BLM issues its record of decision and the CEC
20 issues its decision.

21 So our anticipation is everything will
22 flow through here. The Corps would prefer to use
23 the environmental documents, the NEPA documents,
24 that are prepared by the CEC and BLM.

25 They do have another avenue to use for

1 preparing their own environmental documents if
2 that doesn't work. But, right now I believe the
3 Corps' process will dovetail with this process
4 very well.

5 One exception from the schedule that
6 I've given you is the individual permits would be
7 issued by the Corps after the final environmental
8 impact statement rather than before. So that was
9 an error that I made in terms of pulling together
10 the schedule.

11 The other new item on this is the
12 programmatic agreement for cultural resources.
13 And one of the things that is very important for
14 the success of this project, and again, we have
15 identified target dates for getting that program
16 agreement draft completed and the final version of
17 it signed to be able to allow the cultural
18 resources work to come to its conclusion.

19 So those are basically highlighting the
20 differences between this project comparison and
21 the Solar One project comparison.

22 HEARING OFFICER RENAUD: Would that
23 cultural resources work then anticipated the time?

24 MR. THERKELSEN: Well, in terms of the
25 actual data requests, we have submitted the

1 request, response to the request, from the CEC
2 Staff. The programmatic agreement, we are hoping
3 for a draft of that to be completed by the middle
4 of December. And a final version of the signed,
5 let me see, where is it. It's down here --

6 HEARING OFFICER RENAUD: March 15th.

7 MR. THERKELSEN: March 15th. So that's
8 what our targets are for that. We have not had
9 discussions with the staff in terms of specific
10 dates for those two actions. But would hope that
11 that discussion would happen and we can get those
12 dates, those targets again established. For not
13 only the CEC Staff, but all the other agencies
14 involved, as well.

15 HEARING OFFICER RENAUD: All right.

16 Staff, would you care to comment on this?

17 MR. MEYER: Yes. Christopher Meyer for
18 staff. On the programmatic agreement, BLM has
19 taken the lead on writing that. And I know one of
20 the divisions of labor is the Energy Commission
21 Staff is working primarily on the cultural
22 resource section for the document to free up the
23 BLM Staff to move the programmatic agreement
24 ahead.

25 And both the Energy Commission and BLM's

1 archeologists have requested any help from, you
2 know, Commission Staff and the Governor's Office,
3 anyone that we can get to give a high priority for
4 the review at the federal level of that
5 programmatic agreement.

6 Because it could take anywhere from six
7 months to a year in a normal situation to get that
8 reviewed and approved. So we're asking for a
9 highly expedited process here, so probably someone
10 much higher than staff level needs to make a
11 request that that gets expedited.

12 And otherwise on the schedule, with the
13 understanding that the staff is not certain from
14 the Corps of Engineers, you know, can't speak for
15 the Corps on -- but whether the joint document
16 that we're producing with the BLM, if it's going
17 to be, you know, the 441(b) alternatives analysis
18 requirements, or those set out by the USEPA in
19 their letter early in the project where they
20 listed all the things they wanted for
21 alternatives.

22 If that is not -- if those agencies
23 determine that that does not have the information
24 that they would like, which might be beyond what
25 the Energy Commission and BLM have agreed to would

1 be the level of detail, then, you know, it may be
2 a situation where the Corps of Engineers would
3 have to do additional work.

4 And so recognizing that is a possible
5 delay, outside our proceeding. I think staff
6 would agree that similarly to the schedule for
7 Solar One, the December 31st date is based on
8 opening my Christmas presents at my desk, and
9 therefore is highly --

10 (Laughter.)

11 MR. MEYER: -- accelerated. And these
12 dates are really with the understanding that
13 siting and environmental staff will, if not only
14 working on furloughs, but also getting overtime
15 approval, to work, you know, above and beyond
16 what's -- they're already doing that now, but just
17 sort of continuing, even expand the level of work
18 to that.

19 And also to respond to some of the
20 concerns about additional staff. In some
21 technical areas we've actually gone and brought in
22 additional staff, both through the BLM side and
23 through our contracts with Aspen to bring in staff
24 to expedite some areas that were more complex.

25 Because we, in some areas like soil and

1 biology, we received some additional information
2 just recently. And they were getting additional
3 staff resources to get that done quickly, so that
4 it doesn't slow the schedule down.

5 But, as I said, it's going to be similar
6 to my recommendation for Solar One where we adopt
7 some of the time savings later on in the schedule,
8 but keep the original staff assessment draft EIS
9 date as what staff has the best chance of meeting.

10 PRESIDING MEMBER BYRON: Mr. Meyer, if I
11 may, some of the comments you just made with
12 regard to increased staff made available and
13 accelerated work during the holidays, do those
14 same comments apply to the earlier project. I
15 keep getting them crossed up, and I apologize, the
16 SES One?

17 MR. MEYER: Yes, the problem is I talked
18 about it very briefly before. In our early hopes
19 when the projects were farther apart, we used a
20 lot of the same staff. And in some areas we tried
21 to divide that up a little bit.

22 But a lot of the staff that are going to
23 be rushing to get the Solar -- this project, Solar
24 Two, published by the end of this year, are then
25 going to have to, you know, take at least 10, 15

1 minutes off. And, you know, jump right back in at
2 that same accelerated schedule to get Solar One
3 out shortly thereafter.

4 PRESIDING MEMBER BYRON: Thank you. Do
5 you anticipate any more data requests on SES Two?

6 MR. MEYER: Staff does not anticipate
7 any more data requests unless there are any
8 substantive changes in the project description.
9 And at this point I would send that to the
10 applicant just to make sure that there's no change
11 in boundaries, roads, anything substantive that
12 we'd be looking at.

13 PRESIDING MEMBER BYRON: And I believe I
14 recall reading on this project that we have a new
15 endangered species, is that correct?

16 MR. MEYER: We have a species that on a
17 week ago Monday the Arizona District Court ruled
18 that the flat-toed horned lizard would be
19 reinstated as a proposed threatened species.

20 So it's not actually a threatened
21 species now, but it is again a proposed threatened
22 species.

23 PRESIDING MEMBER BYRON: Does that alter
24 your schedule, or proposed schedule, in any way?

25 MR. MEYER: Actually not because we've

1 had a lot of conversations very early with Fish
2 and Game, Fish and Wildlife, our bio staff and
3 luckily the BLM has some excellent experts on this
4 species.

5 So in working with those staff we
6 anticipated this eventuality. And the applicant
7 has been working to prepare a biological
8 assessment dealing with this very issue so that
9 that could, if necessary, go into a biological
10 opinion if the status of the species changes.

11 HEARING OFFICER RENAUD: I have a quick
12 question for the applicant. The applicant's
13 proposed schedule date for the final decision is
14 August 15th. Staff's was September 15th.

15 Would the September 15th date jeopardize
16 anything about this project in terms of funding or
17 any of the other factors you mentioned about Solar
18 One?

19 MR. GALLAGHER: Possibly, I think, is
20 the best answer. I think the reason for that is,
21 you know, we think that a schedule that concludes
22 much or any later than September 30th really is
23 one that has a small chance of getting through the
24 process of getting into construction.

25 We've tried to build into the schedule

1 here one that has sort of a reasonably aggressive
2 timeframe, but also gives us some wiggle room in
3 case something unexpected happens, as it often
4 does.

5 And so I think we'd be, you know,
6 significantly more comfortable with the schedule
7 that concludes in August than one that concludes
8 in September, because it does give us some room
9 for the unexpected to occur. Although, of course,
10 we'd hope to keep the schedule that we commit to,
11 it gives us some potential room for the unexpected
12 to occur and to still get into construction by the
13 end of the year.

14 HEARING OFFICER RENAUD: All right,
15 thank you. Comments from CURE? We have read your
16 statement, so perhaps if you could just --

17 MS. MILES: Not reiterate everything?

18 HEARING OFFICER RENAUD: Yeah, thank
19 you.

20 MS. MILES: I think definitely we're
21 concerned about the ability to move forward under
22 a compressed schedule. And I recognize the need
23 that, you know, the impetus for trying to compress
24 the schedule.

25 However, from our perspective, we

1 haven't been privy to a lot of the cultural
2 resources information that's been available
3 because that's all been under confidential covers.

4 So one of our concerns is to have time
5 to review that once the staff releases their
6 analysis, prior to evidentiary hearings. And, as
7 I said in the Solar One proceeding, we're also
8 concerned about the preliminary staff -- or I'm
9 sorry, not having a preliminary staff assessment
10 in this proceeding, and going forward with just a
11 staff assessment. Unless that staff assessment
12 really is fully baked, as we discussed in the last
13 proceeding.

14 Because how can we go forward with
15 evidentiary hearings when the staff has not
16 concluded their analysis; and the mitigation,
17 staff has not proposed the conditions of
18 certification. It's going to be very hard to be
19 holding evidentiary hearings.

20 So, we may end up having to have a
21 duplication of efforts if we go forward with
22 evidentiary hearings prior to the conclusion of a
23 fully baked staff analysis.

24 So those are our primary concerns.

25 HEARING OFFICER RENAUD: Thank you. Mr.

1 Meyer, just one quick question pertaining to that
2 comment. Would it be safe to say that when the
3 staff analysis is issued, it might not be fully
4 baked, but it would be more than half-baked?

5 (Laughter.)

6 MR. MEYER: I feel like I'm being led
7 into a verbal trap there.

8 I don't want to say that we're going to
9 come out a half-baked project or a document. But
10 I would say that, unlike our preliminary staff
11 assessments, which were normal, staff recognized
12 that the level of detail in a draft EIS, which I'm
13 familiar with producing those types of documents,
14 requires a much greater level of detail and
15 completeness.

16 So, staff and myself and staff counsel,
17 Caryn, are going to be looking to make sure that
18 the draft document that staff produces is up to
19 the standards of a draft EIS. Which would be much
20 more in keeping with the level of detail staff
21 produces in a final staff assessment.

22 So the idea is that what staff will
23 produce, this joint document that will be a staff
24 assessment/draft EIS, will be to the standard that
25 staff will actually be sending this out as

1 testimony, rather than just a preliminary
2 document. And that's what we're anticipating,
3 with only maybe some minor revisions similar to
4 the changes that we would see in response to
5 evidentiary hearings.

6 HEARING OFFICER RENAUD: All right,
7 thank you. Let me check now if we have anyone on
8 the phone that would like to speak. If you do,
9 please speak up and identify yourself.

10 MS. HARMON: Edie Harmon. I'm at the
11 BLM Office in El Centro.

12 HEARING OFFICER RENAUD: Okay, please go
13 ahead.

14 MS. HARMON: I have a question that
15 rather than rushing so fast to speed everything up
16 and meet deadlines, since the project is already
17 in the pipeline, would it not be potentially
18 possible to ask that the deadline for funding or
19 applying for the stimulus funding be extended for
20 those projects that are in the deadline, rather
21 than potentially rushing them through and missing
22 things, or doing an inadequate job. And that's
23 one question.

24 And another I would say I recently
25 attended a meeting in South Dakota where there

1 were probably half of the attendees were
2 indigenous people from pretty much western U.S.
3 and the Southwest.

4 And over and over I heard the concerns
5 from Native Americans that they, their lands,
6 their culture and their religious values were
7 being considered as just one more sacrifice area
8 in the rush to provide renewable energy and reduce
9 costs for urban areas.

10 And some of the comments came from the
11 people who lived on reservations where there was
12 not even electricity or water available. And they
13 were feeling really threatened and really
14 exploited. Not just people from the reservations,
15 but also some of the Native Americans with PhDs
16 that are academics.

17 And I'm still very sensitive to the
18 concerns of people when, if their culture, their
19 traditional areas and cremation sites and whatnot,
20 that are at risk. Because I think we need to be
21 sensitive.

22 And I haven't read all the details, but
23 my understanding is that President Obama was
24 trying to assure Native Americans that their
25 concerns and their views would be given more

1 consideration in this Administration.

2 And this project is one place where I
3 think there needs to be a great deal of attention
4 paid to those issues.

5 HEARING OFFICER RENAUD: All right,
6 thank you for your comment. And you did ask a
7 question. I believe Commissioner Levin would like
8 to respond to your question about the potential
9 expanding of deadlines for funding.

10 ASSOCIATE MEMBER LEVIN: Well, there's a
11 factual answer and then there's a political
12 answer. The factual answer is the deadlines are
13 mandated by federal law. And, you know, short of
14 getting a change from Congress, it's not in our
15 power to change the deadline for stimulus funding,
16 for funding.

17 I suppose it's conceivable on the other
18 hand, the over-arching purpose of the federal
19 stimulus money is to stimulate the economy. To
20 bring jobs back to the U.S. To create new jobs.
21 And there is a real time pressure to do that.

22 So, I don't think that the Energy
23 Commission will be asking for an extension of that
24 funding. We think it's really important for the
25 state's economy, and also to get us back on track

1 and meet our state's renewable energy goals, that
2 we do move forward more quickly.

3 Having said that, we are very sensitive
4 to the cultural issues, to Native American issues.
5 And we are not going to whitewash over important
6 issues like that. We're required by CEQA and by
7 the Warren Alquist Act to fully consider those
8 issues. We just intend to do so as quickly as
9 possible. And to stay on schedule, both for the
10 RPS and the stimulus.

11 HEARING OFFICER RENAUD: Okay, thank
12 you. Is there anyone else on the phone who'd like
13 to speak?

14 All right, hearing no one, is there
15 anyone in the room who --

16 MS. HARMON: Question?

17 HEARING OFFICER RENAUD: A question,
18 yes.

19 MS. HARMON: Edie Harmon. What we're
20 looking at is the project on the site on public
21 lands. What about -- or what is the status of
22 considering an alternative site on already
23 disturbed land? Because that would remove the
24 issue of cultural resource impacts. It would also
25 remove some of the issues relating to the flat-

1 toed horned lizard, and any mitigation related to
2 those two, the biological and the cultural
3 resource issues.

4 I know earlier I thought there was going
5 to be consideration of the project on already
6 disturbed lands in Imperial County.

7 And as I drove into El Centro today, I
8 went past a number of farm fields where there were
9 for-sale signs up. And there's even more land
10 available now than there was earlier.

11 HEARING OFFICER RENAUD: One of the
12 areas that the Commission Staff analyzes and is
13 required to be analyzed, by law, is alternatives.
14 And that will be very thoroughly explored by
15 everyone.

16 PRESIDING MEMBER BYRON: It's really not
17 the scope of what we're trying to talk about
18 today. But I think the applicant may want to
19 offer an answer. Do you?

20 MR. GALLAGHER: All I can say is there
21 was an alternatives analysis that was submitted as
22 part of the AFC. And we do expect those issues to
23 be fully addressed in the environmental documents.

24 HEARING OFFICER RENAUD: All right.

25 PRESIDING MEMBER BYRON: I don't want to

1 cut off any additional questions that come in, but
2 I have a few, myself, with regard to the schedule,
3 that I'd just like to make sure that I'm clear on.

4 I had the opportunity to ask staff this
5 question earlier. I believe that CURE is not the
6 only intervenor in this, Ms. Miles. I believe
7 there may be others, but you're the only one
8 present, is that correct?

9 HEARING OFFICER RENAUD: No, I believe
10 they're the only one --

11 PRESIDING MEMBER BYRON: The only one.

12 HEARING OFFICER RENAUD: -- at this
13 point.

14 PRESIDING MEMBER BYRON: Ms. Miles, have
15 you completed all of your data requests of this
16 applicant?

17 MS. MILES: Well, I'm sure if I had an
18 opportunity to submit more data requests, I would.
19 But I have to say that CURE is not completely
20 clear on the project and the impacts.

21 For example, the bighorn sheep. I
22 haven't heard any response about any mitigation or
23 potential study of corridors, if they're going to.

24 But, I understand that the timeframe for
25 data requests is closed. And so, it, I guess,

1 precludes our ability to submit additional data
2 requests.

3 PRESIDING MEMBER BYRON: Good. Well,
4 and I'm always reminded what CURE stands for, is
5 California Unions for Reliable Energy. So
6 although you haven't addressed it, I would suspect
7 that you're very interested in seeing California
8 companies get these funds, as well, for projects,
9 aren't you?

10 MS. MILES: Well, certainly, my role
11 representing our client is actually to look at the
12 environmental issues of the project. And so I am
13 not actually the one who's working on establishing
14 jobs or anything like that. My role is just to
15 look at the environmental impacts of these
16 projects and --

17 PRESIDING MEMBER BYRON: Well, you also
18 brought up cultural resource issues a little bit
19 earlier, too.

20 MS. MILES: Oh, I consider that an
21 environmental impact.

22 PRESIDING MEMBER BYRON: Oh.

23 MS. MILES: It is within the scope of
24 the CEQA process.

25 PRESIDING MEMBER BYRON: Mr. Meyer, just

1 want to make sure that I'm clear that the schedule
2 that you've proposed in your most recent
3 submission reflects input in concurrence from both
4 BLM and Fish and Wildlife Services.

5 MR. MEYER: Basically, my -- I can't
6 speak as much -- BLM is willing to answer on their
7 part. And for Fish and Wildlife Service, we've
8 been working with them all along, and we're not
9 anticipating a lot of input from them at this
10 point, since the species is not threatened at this
11 point.

12 But we have been working with them all
13 along. Our Energy Commission Staff has taken the
14 chief role in authoring this document, has been
15 working with them and understands their issues
16 enough that they believe that they can address
17 mainly biology and cultural that we can address
18 the issues of the other agencies.

19 But primarily Fish and Wildlife Service,
20 we think we understand well enough that we'll be
21 able to move forward at this point under this
22 schedule.

23 PRESIDING MEMBER BYRON: Does BLM want
24 to address the scheduling issue, please?

25 MR. BORCHARD: Steve Borchard, BLM. The

1 end of the year poses operational difficulties for
2 BLM. Our preference would be to see the date
3 moved up to the 18th of December.

4 PRESIDING MEMBER BYRON: Which date is
5 that, please?

6 MR. BORCHARD: The DEIS/SA publication
7 date. The reason for that is the clearance
8 process that BLM uses through its various levels
9 of the organization and the requirement to get the
10 Secretary of Interior's Office to sign off before
11 we publish.

12 The likely outcome of the 12/31 date
13 would probably push our actual publication
14 clearance process a week or two into the month of
15 January. Whereas, if we could turn it to the
16 18th, we're likely to get approval and get that
17 document on the street in December, rather than a
18 week or two into January.

19 ASSOCIATE MEMBER LEVIN: Mr. Borchard,
20 I'm new to the siting world, fairly new to the
21 Commission still, but I have to say it's quite
22 refreshing to hear BLM actually offer up an
23 earlier deadline.

24 (Laughter.)

25 ASSOCIATE MEMBER LEVIN: What a great

1 example you're setting.

2 MR. BORCHARD: It's a brave new world --

3 ASSOCIATE MEMBER LEVIN: Well, thank you
4 for doing that. It will be a great holiday
5 present for everyone.

6 MR. MEYER: Not for me because he
7 actually just offered me to write it faster.

8 (Laughter.)

9 ASSOCIATE MEMBER LEVIN: Well, Mr.
10 Meyer, that raises a question. Commissioner, if I
11 may. So that would move us up almost two weeks.
12 Does that translate into the remainder of the
13 schedule gaining two weeks, or can you explain
14 what --

15 MR. MEYER: That basically --

16 ASSOCIATE MEMBER LEVIN: -- is of that?

17 MR. MEYER: I'm sorry. The BLM's role
18 at this point, my understanding is, the Energy
19 Commission Staff will write the document; present
20 it to the BLM. And we're actually already sending
21 sections to the BLM and we're getting more ready.

22 Then we get the comments back and we're,
23 on some of them we're going back and forth a
24 couple times at the local level.

25 So, it can be a fairly complex review

1 process. So the idea is to do this, get these
2 several iterations back and forth between the
3 Energy Commission Staff, BLM. And then when we
4 get it back from the BLM, we have to -- have to
5 then go ahead and negotiate the BLM changes with
6 three levels, three to four levels of Energy
7 Commission Staff, because they're going to be the
8 testimony of Energy Commission Staff. Staff to be
9 able to actually sign off the declaration on them.

10 And then once we have all that together
11 it will go to the BLM as a completed document to
12 go up through their full process.

13 So it's a fairly complex project when
14 I'm not going to get the final sections until
15 December from some of the technical areas.

16 So going through that entire process in
17 a matter of a week or so, that's including legal
18 review, Energy Commission management review, and
19 several levels of BLM review, as well. I don't
20 see any possible way when, you know, trying to get
21 a, you know, a ten-page status report through at
22 that time, -- trying to get a document that could
23 run hundreds of pages through. I don't see is
24 something I could realistically commit to.

25 PRESIDING MEMBER BYRON: One last

1 question, please. You had mentioned earlier, Mr.
2 Meyer, about a request at a higher level of
3 management of Fish and Wildlife Services. I don't
4 recall specifically with regard to which item.

5 MR. MEYER: Oh, I'm sorry. At Fish and
6 Wildlife Service we haven't had a lot of -- we've
7 just been talking with staff on that, since we're
8 not anticipating a lot of high-level input from
9 Fish and Wildlife Service.

10 The talks we had had on the -- well, the
11 biological staff were talking to their staff on
12 the bighorn sheep. It appeared it was more of --
13 I'm giving you these second-hand, because they
14 were actually through the BLM -- but they were not
15 as concerned with the transitory nature of the
16 bighorn sheep because they were seen as going
17 across the site, rather than as being part of
18 their habitat.

19 So they were not seeing this as a big
20 problem. But that's something that I will follow
21 up for you with BLM.

22 Oh, I'm sorry, were you talking the
23 programmatic, or is there something else that I'm
24 missing? The programmatic is a cultural issue,
25 not a Fish and Wildlife Service.

1 MS. HOLMES: Right. The conversation
2 earlier about needing higher level help was a
3 comment made with respect to the programmatic
4 agreement to deal with cultural issues. So
5 perhaps there's some confusion there as to whether
6 we're talking about biology or cultural resources.

7 MR. MEYER: Yeah, that's my -- yes, no.
8 Yeah, the higher level help on the Solar Two
9 project is definitely reviewed with regards to the
10 review of the cultural resource issues.

11 PRESIDING MEMBER BYRON: Okay. And, of
12 course, Fish and Wildlife Services is not involved
13 in this hearing today. But we would, of course,
14 be interested in pursuing this issue further with
15 them so that they can accelerate or apply the
16 necessary manpower for their effort.

17 ASSOCIATE MEMBER LEVIN: I've got a few
18 additional questions including follow up on the
19 previous issue. And forgive me because I am new
20 to this. This is my first scheduling conference
21 or hearing.

22 But, I asked -- I guess this is, in
23 part, a question back to Mr. Borchard, I don't
24 want to -- your name. What your expectation is
25 about staff, your staff availability of Fish and

1 Wildlife Services availability over the holidays.
2 To your point that if we slip past the 18th we're
3 looking at into the first week, the end of first
4 week in January.

5 And a very much related question for Mr.
6 Meyer is given Mr. Picker's, offer may be too
7 strong a word, but hope of additional resources,
8 are the sort of work constraints you're talking
9 about something that, if we had additional
10 resources, quickly we could overcome?

11 I just -- I'm sympathetic to the
12 applicant's concern that the closer we get to the
13 deadline, you know, the more likelihood is we slip
14 past it. And then, you know, we're not
15 guaranteeing that there will be a permit in this
16 case, but if there is a permit I hate to miss the
17 window by a month or a few weeks.

18 So every few weeks we can build in some
19 insurance, I think it is in all of our interests
20 to do that.

21 MR. MEYER: When I ran the numbers on
22 what I thought was realistic and feasible, I came
23 out with a date in January. Several meetings with
24 siting management, environmental staff management,
25 the different technical people, it was explained

1 that if enough pressure was put on them and we got
2 additional resources where we could.

3 And it may even come to the point of
4 certain people not getting the review that they
5 may like. The time, you know, to review it. It's
6 putting a lot of pressure on people that are sort
7 of above my pay grade, which brings me to a
8 problem.

9 But the 12/31 date is a result of a
10 significant compression of the schedule that I was
11 looking at as realistic. So, to go beyond that
12 I'm still struggling with how I'm going to meet
13 that date. And that's going to take a lot of
14 putting additional pressure on the staff that's
15 already sort of at a breaking point with the
16 amount of work that it has.

17 So, the major staff member that has sort
18 of the highest level of work, we're getting
19 additional resources from BLM to help him out.
20 We're also, the environmental office is removing
21 other projects from his desk so he can focus
22 solely on this project.

23 Even with all of that, it's still a
24 concern that this basic cultural resources;
25 because to give people a little perspective, my

1 understanding is this one project has greater
2 cultural resource, you know, more cultural
3 resources on it than any -- well, basically every
4 other project the Energy Commission's ever looked
5 at combined.

6 So, we're talking about a ten-square-
7 mile project with, you know, over 300
8 archeological resources. And we're getting down
9 to well over 200 when you get to ones that take
10 more detailed research.

11 So, as, you know, Edie mentioned, we
12 have, you know, funerary issues, we have --
13 issues, there's a lot of very complex cultural
14 resource issues here that, you know, looking at a
15 12,000-page or several iterations, so a 12,000-
16 page cultural resource report on this.

17 And then subsequent reports to correct
18 parts of that, update parts of it. It's a very
19 daunting project.

20 You know, back when I was running
21 cultural resource programs for large-scale
22 projects, for an effort of this nature I would
23 probably take two to three years, instead of
24 trying to get it down into, you know, just about a
25 year.

1 So, if that answers your question, we're
2 giving this as many resources we can on this to
3 expedite it. But trying to push it back into, you
4 know, earlier part of December, recognizing that,
5 you know, both -- you know, Jim Stobaugh, the
6 Project Manager from BLM on this, expressed the
7 same thing as Mr. Borchard.

8 I can't honestly say that I think that
9 that's possible. Because I don't want the BLM
10 Staff waiting for something on the 18th if I don't
11 think that I'm going to be in a position to
12 deliver that.

13 MR. BORCHARD: We've been talking about
14 a strategy for how to complete our reviews on
15 chapter, or a portion-by-portion basis. And I
16 think after agreement that as individual chapters
17 are put together they will be transmitted to BLM.
18 And BLM will expedite the review process.

19 In the case that we are aware of the
20 challenge faced to produce the cultural analysis
21 and have made the decision that we will publish
22 the -- forego the review for the draft EIS
23 purpose, publication purpose of the cultural
24 resource analysis produced by staff. And would
25 complete our review between the draft and the

1 final EIS, rather than take up the time to do a
2 review and potentially slide the deadline.

3 So we'd be doing incremental reviews,
4 chapter by chapter, as they come in. The last
5 chapter we anticipate receiving, or that staff
6 will complete as a cultural, we will forego our
7 review of the cultural for the purposes of
8 publishing the draft EIS. And complete our review
9 between the draft and the final.

10 ASSOCIATE MEMBER LEVIN: Thank you.
11 Well, that brings up my other question. Mr.
12 Meyer, earlier you mentioned the cultural
13 resources, and I think you asked the Commissioners
14 and others to help expedite that review at higher
15 levels. Can you be more specific on how we can be
16 helpful?

17 MR. MEYER: I'm sorry, that's the review
18 of the programmatic agreement. Basically, in
19 order to --

20 ASSOCIATE MEMBER LEVIN: Actually, no.
21 It was earlier in your presentation you were
22 talking about the cultural resources and it's
23 usually a six- to 12-month review. But that you
24 need help to a higher level to expedite that. And
25 I'm not sure --

1 MR. MEYER: That's the programmatic
2 agreement. That was the conversation about the
3 programmatic agreement that was actually an
4 agreement between the SHPO and the BLM where the
5 Energy Commission is, you know, sort of an invited
6 signatory.

7 But that allows the agencies to
8 basically permit the plan without the -- excuse
9 me, the project without the applicant having gone
10 through and done phase two, phase three, final
11 report, complete evaluation and mitigation of all
12 cultural resources. Which is, you know, as I
13 said, on this project could be very extensive.

14 The programmatic agreement is a tool
15 that BLM uses a lot and different federal agencies
16 use a lot to allow us to get to a decision point,
17 either approving or not, in advance of the
18 cultural resource work.

19 It also has another major benefit that
20 it doesn't -- since cultural resource mitigation
21 is a destructive science, it doesn't require the
22 full excavation of a bunch of archeological sites
23 on a site that may not get approved.

24 So you're not going out there and
25 digging up, you know, a village site that would be

1 avoided by the project, and the impact was
2 actually the evaluation.

3 Does that answer your question?

4 ASSOCIATE MEMBER LEVIN: No. You had
5 said specifically that we could be helpful
6 expediting that process.

7 MR. MEYER: Yes.

8 ASSOCIATE MEMBER LEVIN: So where -- who
9 do we need to talk to about expediting that is my
10 question.

11 MR. MEYER: The SHPO. The State
12 Historic Preservation Officer, I'm sorry, I'm
13 using --

14 ASSOCIATE MEMBER LEVIN: Thank you.

15 MR. MEYER: I've been in government too
16 long, I've -- I love my acronyms. Probably the
17 SHPO would be the --

18 ASSOCIATE MEMBER LEVIN: And the SHPO
19 is?

20 MR. MEYER: The State Historic
21 Preservation Officer.

22 ASSOCIATE MEMBER LEVIN: Thank you.

23 MR. MEYER: And I will provide that
24 information to everyone, so that you have contact
25 numbers, names, everything.

1 ASSOCIATE MEMBER LEVIN: Great. Thank
2 you.

3 HEARING OFFICER RENAUD: All right.
4 Before we adjourn, let me ask if there's anyone
5 else here who wishes to comment on the scheduled
6 matters.

7 MS. MILES: I have an additional
8 comment.

9 HEARING OFFICER RENAUD: Is it about
10 scheduling?

11 MS. MILES: Yes.

12 HEARING OFFICER RENAUD: All right.

13 MS. MILES: I'm concerned about the
14 cultural resources, what I was just hearing about
15 it not actually being a complete analysis prior to
16 the draft EIS.

17 And I understand that it's going to take
18 a long time to complete cultural resources.
19 However, this proposed schedule has the
20 evidentiary hearings ending, there's no date for
21 the CEC Staff. But there is a date for the
22 applicant.

23 I just want to point out that the
24 applicant's date is May 21, 2009. Whereas, the
25 final EIS the date is May 1st. So there's just

1 not a lot of time between these two dates to
2 evaluate any new information that would be
3 submitted about cultural resources, if it is
4 indeed that the analysis is being completed at the
5 time of the final EIS, rather than the draft EIS.

6 I think really that's putting the cart
7 before the horse, and just I need to flag that the
8 public and the intervenors are not privy to this
9 information. So we're not going to be able to
10 develop an analysis in such a brief amount of
11 time.

12 HEARING OFFICER RENAUD: A brief
13 response by Mr. Meyer.

14 MR. MEYER: Yeah, I'll keep this one
15 brief. The agreement is a legal method for
16 setting out exactly how all of the cultural
17 resource information will be gathered, processed.

18 In a very complex case you can spend
19 years implementing every step as laid forth in
20 this agreement, where the SHPO is sort of watching
21 and marshaling this through .

22 And the idea is that you're not going to
23 see the completion of all of the mitigation
24 treatment set forward in a programmatic agreement
25 prior to the decision.

1 In the documents coming out of the
2 Energy Commission and BLM, it'll spell out exactly
3 how we anticipate the project being fully
4 mitigated for cultural resources, with the use of
5 this tool, this programmatic agreement.

6 With the understanding that after the
7 decision, you know, if the information that comes
8 in is such that BLM and the Energy Commission
9 decide to recommend approval of the -- or if they
10 approve the project, then it would understand that
11 the applicant would have extensive amount of work
12 to do, and they could be approved to start in
13 different areas by the SHPO depending on how the
14 programmatic agreement is worded.

15 But it's not anticipated that all of the
16 work would be done by the decision date, even
17 though the applicant would be heavily encouraged
18 not to wait for the decision to start doing
19 additional, you know, to keep sort of doing the
20 cultural work, to sort of, you know, keep the
21 thing going as much as possible; to minimize, you
22 know, work that needs to be done later in the
23 process.

24 But, no, it's like it's not anticipated
25 that we'll have the final cultural resource report

1 based on all the work that's going to be done, or
2 that would be done, if the project's approved,
3 under a programmatic agreement. It would not
4 happen until much later in the process.

5 MS. MILES: So, you actually -- there's
6 a possibility that this project can be shovel-
7 ready in the time necessary to meet the funding
8 and be able to mitigate the cultural resources
9 impact?

10 I'm trying to understand even how the
11 mitigation will move forward.

12 MR. MEYER: My understanding from
13 working on similar projects with FERC, other
14 agencies, is we've used this process, too, on, you
15 know, several-hundred-mile pipeline that had
16 different schedule issues, similar to this, you
17 know, schedule issues they had to meet. And there
18 were cultural resources in certain parts.

19 They did the work on the first phases
20 early. And when they were working on those, as
21 they were building, they were completing the
22 cultural resource work on the subsequent phases,
23 so that they were always trying to keep the work
24 ahead. And the SHPO would approve them to proceed
25 after the work was completed, and when it was

1 completed in the subsequent phases.

2 So, it's a little bit of a dance, but
3 the agreement would spell out very clearly that
4 the completion of the work would drive the
5 schedule, not anything else.

6 HEARING OFFICER RENAUD: All right,
7 thank you. Let me ask the Members of the
8 Committee if they have any final comments before
9 we adjourn.

10 PRESIDING MEMBER BYRON: I'd like to
11 thank you all for being here today. It was very
12 helpful information. I'm sure we'll be able to
13 come out with a revised schedule.

14 ASSOCIATE MEMBER LEVIN: I would just
15 like to ask staff to notify all of us as quickly
16 as possible if you sense slippage coming, or if it
17 actually occurs. I think you've heard loud and
18 clear the need to make every possible effort in
19 this to keep this on track.

20 And where I'm sure if I can speak for
21 Commissioner Byron and myself and others, where we
22 can be helpful, where the Governor's Office has
23 offered to be helpful where they can, don't wait
24 to let us know if there are delays.

25 We all need to do everything we can.

1 And we can't be helpful unless you let us know in
2 a very timely way.

3 HEARING OFFICER RENAUD: And the revised
4 schedule that will come out, we will include
5 staff's reports so that we'll know from those.

6 And if there's nothing else, we'll stand
7 adjourned. Thank you.

8 (Whereupon, at 2:56 p.m., the Committee
9 Conference was adjourned.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Conference; and that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of November, 2009.

JOHN COTA

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

November 18, 2009

Margo D. Hewitt,

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